IN THE HIGH COURT OF UTTARAKHAND, AT NAINITAL.

Criminal Appeal No. 162 of 2007

(Old No. 3444 of 1985)

Mahidhar Prasad S/o Kedar Dutt,
R/o Village Ratura, Patti,
Dhampur, Pauri Garhwal ...Appellant.

Vs.

The State of U.P. .. Respondent.

Sri R.P. Nautiyal, learned counsel for the appellant.
Sri Nandan Arya, learned A.G.A. for the respondent.

With

Criminal Appeal No. 163 of 2007

(Old No. 3460 of 1985)

Alam Singh S/o Bali Singh,
R/o Ratura Patti Dhanpur,
Pauri Garhwal ... Appellant.

Vs.

The State of U.P. .. Respondent.

Sri G.S. Negi, learned counsel for the appellant.
Sri Nandan Arya, learned A.G.A. for the respondent.

Dated: November 20, 2007

Hon'ble B.C. Kandpal, J.

Both these criminal appeals, U/S 374 of the Cr.P.C. have been preferred against the judgment and order dated 3-12-1985, passed by Special Judge, Pauri Garhwal, in Special Criminal Case No. 14 of 1984, convicting the accused/appellants U/S 3/7 of Essential Commodities Act, and sentencing both of them to undergo R.I. for three months and to

pay a fine of Rs. 1000/- each and in default of payment of fine to further undergo three months' R.I.

2- Both the appeals arise out of the same judgment, hence these are being decided by this common judgment.

3- The facts of the case, in brief are that Sadhan Sakhari Samiti Ratura, was running a fair price food grains shop in village Ratura during the relevant period. The accused Alam Singh and Mahidhar Prasad were then employed as Salesman and Secretary respectively in the said Samiti. The fair price shop remained closed from 25-8-1983 onwards. The Area Rationing Inspector H.S. Dimari, inspected the spot and found the shop locked. On information from Mahidhar Prasad Secretary of the Samiti, that the Salesman Alam Singh had placed his lock on the shop, the Area Inspector directed the Secretary to place another lock on the shop so that the Salesman might not open the shop till physical verification of the goods stored in the shop was done. Thereupon Area Rationing Officer Khalil Ahmad was authorized by the District Supply Officer to conduct physical verification of the stocks in the shop by breaking opening the locks. On 25.2.1984, Khalil Ahamad conducted physical verification of the stocks in the shop in the presence of the Secretary Mahidhar Prasad, Chairman Rajendra Singh and other public witnesses. The second lock was opened by Mahidhar Prasad, while the other lock allegedly placed by the Salesman was broken open. On inspection no stock of salable articles was found in the shop. Sixteen ration cards of customers were found lying inside the shop which were taken into

custody. The stock and sales register of the shop was also taken into custody. As per entries in this register 15 kgs. Wheat, 2½ kgs. Khandsari, 192 kgs. Sugar, 15.400 kgs. Rice and 2131 litres of kerosene oil should have been in the shop as on 25.2.1984, but the same was not there. There was no entry in the sales register showing disbursement of all these articles. Therefore the matter was reported to the police and a case for offence punishable under Section 3 read with Section 7 of Essential Commodities Act for contravention of provisions of U.P. Food Grains & Other Essential Articles Distribution Order, 1977, (hereinafter referred as 'Distribution Order 1977') was registered against the accused Alam Singh as Salesman. During investigation both Salesman and Secretary of the Samiti were prosecuted as persons incharge of and responsible to the Samiti for the conduct of the business of the Samiti.

4- The Police after completing the investigation, submitted charge sheet, Ext. Ka.7 against the accused/appellants.

5- The accused/appellants pleaded not guilty to the offence. Alam Singh, Salesman has stated that his duty was restricted to weighing of the articles for delivery to customers against ration cards and maintenance of accounts of the shop business and over all charge of the shop was that of the Secretary of the Samiti, viz Mahidhar Prasad. However, the claim of the Secretary Mahidhar Prasad was that Alam Singh, Salesman was exclusive incharge of the fair price shop and was also concerned with the accounts. Both the accused have made attempts to

avoid responsibility and to shift the same on the other for contravention of Orders 20 and 23 of the Distribution Order, 1977.

6- The prosecution in support of its case produced Khalil Ahmad P.W.1, Trilok Singh, P.W.2 and Sardar Singh Sirohi, as P.W.3 P.W.1, Khalil Ahamad was Area Rationing Officer, who conducted physical verification of the Shop on 25.2.1984 in presence of witnesses and found that sixteen ration cards were lying inside the shop and the food grain stocks was also short.

7- P.W.2, Trilok Singh has been examined as a witness of physical verification of the shop on 25.2.1984. He also happens to be a ration card holder. He has stated that normally the shop business was conducted in the manner that the Secretary Mahidhar Prasad used to receive payment of goods sold against ration cards to customers and Alam Singh had been weighing and delivering the articles to customers inside the shop.

8- P.W.3, S.I. Sardar Singh Sirohi has investigated the case. He has proved the site-plan Ext. Ka.5 of the fair price shop drawn up by him. This witness has stated about the steps taken by him during investigation.

9- The accused persons in their statements U/S 313 Cr.P.C. denied the allegations. Accused Mahidhar Prasad stated that when the locks were broken open there was no stock inside the shop. However, he alleged that Alam Sigh used to keep the register and used make entries himself and from

others also in the register. The accused Alam Singh alleged that he used to do the work of weighing the articles and delivering the same to the customers.

10- The learned Special Judge, after considering the material on record and having heard the learned counsel for the parties, found the accused persons guilty U/S 3/7 of Essential Commodities Act for contravention of Orders 20 and 23 of the U.P. Food Grains & Other Essential Articles Distribution Order, 1977 and accordingly sentenced them to undergo R.I. for three months and to a fine of Rs. 1000/- and in default of payment of fine to further undergo R.I. for three months.

11- Feeling aggrieved both the accused persons have preferred the appeals.

12- I have heard the leaned counsel for the parties and have gone through the record.

13- Sri R.P. Nautiyal, Advocate appearing on behalf of appellant Mahidhar Prasad, Secretary of the Sadhan Sahkari Samiti, has argued that the Secretary had no concerned over the fair price shop, it was solely the responsibility of the salesman to carry on the business of the shop, to maintain the stock and accounts. The Secretary had only supervisory control and he cannot be held liable for the breaches committed by the Salesman.

14- Sri G.S. Negi, learned counsel for appellant Alam Singh has opposed the above submission and submitted that Alam Singh, had no control over the fair price shop, he was entrusted

with the work of weighing the articles and their delivery to the customers. It was the duty of the Secretary to maintain the accounts, therefore, he cannot be held responsible for the breaches.

15- The first and foremost question in this case arises whether the Salesman of the fair price shop was solely having full control over it and the Secretary had no any control and concern with the conduct of business of the shop. Undisputedly the Salesman accused Alam Singh was appointed vide resolution No.1 of the Sadhan Sahkari Samiti dated 9-9-82. Vide resolution No.5 he was allotted the work to maintain the accounts of daily sale and to deposit the sale amount in the office. The functions of the Secretary have been enumerated in sub section (2) of Section 31 of U.P. Cooperative Societies Act, 1965, which runs as below:-

> "31 (2) The Secretary shall be the Chief Executive Officer of the society and subject to such control and supervision of the Chairman and the Committee of Management as may be provided in the rules or the bye-laws of the society shall-
>
> (a) be responsible for the sound management of the business of the society and its efficient administration;
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> (b) carry on the authorized and normal business of the society;
>
> (c) subject to the provisions of the bye-law of the society, operate its accounts and, except where the society has a cashier or treasurer, handle and keep in his custody its cash balances;

(d) sign and authenticate all documents for and on behalf of the society;

(e) be responsible for the proper maintenance of various books and records of the society and for the correct preparation and timely submission of periodical statements and returns in accordance with this Act, the rules, the bye-laws and the instructions of the Registrar or the State Government.

(f) convene meetings of the general body, the Committee of Management and any sub-committee constituted by the Committee of Management and maintain proper records of such meetings; and

(g) perform such other duties and exercise such other powers as may be imposed or conferred on him under the rules or the bye-law of the society.

16- From perusal of above provision it is quite clear that the Secretary was also responsible for sound management of the business of the society. He was also responsible for the proper maintenance of various books and records of the society and for the correct preparation and timely submission of periodical statements and returns.

17- Further, P.W.2, Trilok Singh has been examined as a witness of physical verification of the shop. This witness was also a cardholder of the shop and he stated on oath that normally the shop business was conducted in this manner that the Secretary Mahidhar Prasad used to receive payment of goods to be supplied against ration cards to consumers and Alam Singh had been weighing and

delivering the articles to the customers inside the shop. Therefore, in view of the duties assigned to the Salesman in the resolution No.5 of the Sadhan Sahkari Samiti and the responsibilities of the Secretary enumerated in Section 31 (2) of the U.P. Cooperative Societies Act, 1965, it is quite clear that both the Salesman and the Secretary were responsible for breaches committed by them.

18- The accused/appellants have been found guilty of contravention of Orders 20 & 23 of U.P. Food Grains & Other 20 prohibits the authorized retail distributor for keeping in his possession the identity cards/ration cards of any person other than himself, except by way of bona fide collection of identity cards from person actually preset at the shop at a given time, for facility of distribution of foodgrains and other essential articles to them at that time. In the instant case admittedly 16 ration cards of the customers were found lying inside the shop and were taken into custody. These ration cards were marked exhibits 1 to 16. Therefore, the accused persons have rightly been held guilty of contravention of Order 20 of the Distribution Order, 1977.

19- Further the accused/appellants have been found guilty of contravention of Order 23 of the Distribution Order, 1977. Order 23 of Distribution Order, 1977 runs as under:-

> **"23. Maintenance of accounts etc.-** Every authorized retail distribution shall maintain in such form and manner as the District

Magistrate may direct, on account of all purchases, sales and transactions made by him of any food-grains or other essential articles. He shall also furnish information, returns statements and reports as he may be required to furnish by the District Magistrate or under an order of the State Government made under the Act."

20. The above provisions casts a duty upon authorized retail distributor to maintain accounts of all purchases, sales and transactions made by him of any food-grains or other essential articles. In the instant case at the time of inspection, i.e. on 25.2.1984, as per the entries in stock register, 2½ kgs. Khandsari, 192 Kgs. Sugar, 15 Kgs. Wheat, 15.400 Kgs. Rice and 2131 litres of kerosene oil should have been there in the shop, but it was not found there and there was also no entry regarding disbursement of these articles to bona fide customers against identity cards in the sales registers. Therefore it was a clear case of breach of provisions of Order 23 of Distribution Order, 1977.

21. Learned counsel for the appellants also contended that the learned Special Judge, in the impugned judgment and order has found the revisionists guilty of offence under Section 3 read with Section 7 of the E.C.Act for contravention of orders 20 & 23 of U.P. Food Grains & Other Essential Articles Distribution Order, 1977 and were sentenced to three months R.I. and a fine of Rs. 1000/-. But the learned Judge has not specified that in which clause of sub section (1) of Section 7 of the E.C. Act he has sentenced them. The learned

counsel also urged that the case of the accused/appellants falls under Section7(1)(a)(i) of the E.C. Act and they should have been punished under this aforesaid head.

22. I have gone through the provisions of Section 7 of the E.C. Act, and I am of the view that the submission raised by learned counsel for the appellants has no substance. The offences with reference to clause (h) or clause (i) of Sub-Section (2) of Section 3 of the E.C. Act are covered under Section 7 (1)(a)(i) of the Act. Under clause (h) and (i) of Sub-Section (2) of Section 3, the offences are said to have been committed while collecting any information or statistics with a view to regulating or prohibiting the matters pertaining to licences, controlling the prices of essential commodity etc. as enumerated in clauses (1) to (h) and requiring persons engaged in production, supply or distribution or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order. But in the instant case the inspection of the fair price shop was made by the Area Rationing Officer after breaking open the locks of the shop, therefore, the offence committed by the accused/appellants falls within Section 7 (1) (a) (ii) of the E.C. Act, in which minimum sentence of three months has been prescribed. Non-specifying the clause under which the appellants have been sentenced, in the impugned judgment, do not vitiate the conviction of the accused/appellants, merely on this technical point.

23- For the foregoing reasons the appeals lack merit and is liable to be dismissed.

24- Accordingly both the appeals are dismissed. The impugned judgment and order dated 3-12-1985 passed by Special Judge Pauri Garhwal, in Special Criminal Case No. 14 of 1984, is upheld.

25- The appellants are on bail. Their bail bonds are cancelled. They be taken into custody forthwith to serve out the sentence awarded against them. The stay of fine also stands vacated.

26- Let a copy of this judgment be placed in the file of Crl. Appeal No. 163/2007.

(B.C. Kandpal, J.)

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